IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 2652 OF 2007

Kanchan & Company ..Petitioner

Vs.

Shivprakash Janakraj & Co. ..Respondent No.1. (Org. Plff.)

And

Prithvishkumar B. Purohit and anr. ..Respondent Nos.2 & 3 (Org.Def.Nos. 2 and 3)

Mr. Milind Sathe, Senior Advocate with P.P. Paul i/by M/s. Nanu Hormasjee and co. for petitioner.

Mr. A.H. Gokhale i/by Mr. Madhukar Harmawar for respondent no.1.

CORAM: B.H. MARLAPALLE,J.

Reserved on : June 07, 2007.

Pronounced on : June 29, 2007.

P.C.:

1. This writ petition filed under Article 227 of the Constitution arises from the order passed by the Small Causes Court on 11/8/2006 thereby discharging the Interim Notice No.299 of 2006 and confirmed by the Division Bench of the said court in Revision

Application No. 220 of 2006 as per the judgment and order dated 17/10/2006.

2. Interim Notice No. 299 of 2006 was filed by the defendant no.1-tenant praying for directions against the plaintiff to pay a sum of Rs.3,11,996/- to the applicant/defendant no.1 as the said amount was paid by defendant no.1 to the Society towards the maintenance charges, taxes and other dues in respect of the suit premises. The learned Judge of the Small Causes Court noted that the suit was filed by the landlord for eviction of the tenant and on the ground of subletting to defendant nos.2 and 3, after framing the issues the suit was part heard and, therefore, the Interim Notice taken out by the defendant no.1 was beyond the scope of the provisions of the Maharashtra Rent Control Act, 1999 (for short the Rent Act). It has been further held that the defendant no.1 could not ask for such directions against the plaintiff when the plaintiff has filed the suit for eviction. The revision court agreed with the view taken by the trial court and further held that Section 33 of the Rent Act does not empower the trial court to entertain and decide such an application and even if it is presumed

that the defendant no.1 had paid such charges to the society, it had a remedy to file a Civil Suit against the plaintiff-landlord to recover any such excess amount. In addition, the revision court held that no substantive right of the petitioner was found to be affected on account of the order of the trial court by discharging the notice.

3. Shri Sathe, the learned Senior Counsel, referred to the scheme of Section 33 of the Rent Act and submitted that any issue relating to or arising out of the pending suit can be decided by the Small Causes Court and the claim for recovery of society charges and to be recovered from the landlord was an issue relating to or arising out of the pending suit or proceedings. In this regard he placed reliance on the decision of this Court (Single Bench) in the case of Pacific Engineering Co. Pvt. Ltd. vs. East India Hotels Ltd. **[2005 (1) Bom.C.R. 427]** and also the decision of the Punjab and Haryana High Court in the case of Discount Bank of India Ltd. vs. A.N. Misra **[AIR 1953 Punjab 256]**. Section 33(1) (c) of the Rent Act reads as under:-

33. Jurisdiction of courts.

(1) Notwithstanding anything contained in, any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction,-

(a) in Brihan Mumbai, the Court of Small Causes, Mumbai.

(b) in any area for which a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1897, such court, and

(c) elsewhere, the court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding

between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorised by it or the Competent Authority); and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question.

. It states that the Small Causes Court in Brihan Mumbai shall have jurisdiction to entertain and try any suit or proceeding between a landlord or a tenant relating to the recovery of rent or possession of any premises and to decide any application made under the Rent Act (other than the applications which are to be decided by the State Government or an officer authorised by it or the Competent Authority) and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with

such claim or question. Mr.Sathe placed emphasis on the words, "and to decide any application made under this Act" and submitted that any application submitted by any of the parties for relief against the other party is maintainable and is required to be decided by the Small Causes Court in the pending suit.

4. The scheme of Section 33 of the Rent Act is similar to the scheme of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act for short). Section 28 (1) of the Bombay Rent Act reads as under:-

28. Jurisdiction of Courts

(1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction.-

(a) in Greater Bombay, the Court of Small Causes, Bombay,

(aa) in any area for which, a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court and

(b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge the Court of the Civil Judge (Senior Division) having ordinary jurisdiction,

shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply or between a licensor and a licensee relating to the recovery of the licence fee or charge and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of sub-section (2), no other court shall have jurisdiction to

entertain any such suit, proceeding, or application or to deal with such claim or question.

. It is thus evident that the Small Causes Court in Greater Bombay shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of Part -II shall apply or between a licensor and a licensee relating to the recovery of the licence fee or charge and to decide any application made under the Act and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question.

5. It is to be noted that the words, "....and to deal with any claim or question arising out of this Act or any of its provisions....", as are in Section 28(1)(b) of the Bombay Rent Act have not been incorporated in Section 33(1)(c) of the Rent Act.

Under the Rent Act the court shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under the Act and subject to the provisions of sub-section (2).

6. In the instant case, the plaintiff-landlord has filed the suit i.e. RCS No. 1095/1961 of 2004 for eviction of the tenant on the following grounds:-

(a) Non user of the suit premises in breach of the terms of tenancy.

(b) Inducting defendant nos.2 and 3 as sub-tenants in breach of the terms of tenancy and the provisions of law or unlawfully the sub-tenancy has been created.

(c) The defendant nos.2 and 3 are using the suit premises unlawfully and without any right and contrary to the provisions of the law for their office and they are carrying out their profession as an Advocate from the said

premises.

(d) Bonafide requirement of the plaintiff.

. The suit has not been filed for recovery of rent or arrears of rent and at the same time possession of the suit premises has not been sought on the ground of default in payment of rent or default in payment of permissible increase etc. The words, " and to decide any application made under this Act" incorporated under Section 33(1)(c) of the Rent Act will have to be read to mean an application touching upon the issue of tenancy, landlord-tenant relationship, amendment application to the plaint or to the Written Statement, fixation of standard rent and so on and so forth. In the instant case, the application was filed by the tenant-defendant in the pending suit filed by the landlord and the suit has been filed for possession of the suit premises on the grounds noted hereinabove, but not on the ground of default in payment of rent or permissible increases.

7. In the case of Messrs. Importers and Manufacturers Ltd. vs. Pheroze Framroze Taraporewala

and ors. **[AIR 1953 SC 73]**, the Supreme Court considered the scheme of Section 28 of the Bombay Rent Act and held that the jurisdiction to entertain a suit for possession will empower the Court not only to pass a decree for possession but also to give directions for payment of mesne profits until delivery of possession and such a direction for payment of mesne profits is usually an integral part of the decree for possession. It further held that an application made for being impleaded as a party to the suit will also have to be considered in such a suit, if made by a third party. In the case of Babulal Bhuramal and anr. vs. Nandram Shivram and ors. **[AIR 1958 SC 677]**, the following observations made in para 7 are required to be noted:

> ".....Do the provisions of Section 28 cover a case where in a suit one party alleges that he is the landlord and denies that the other is his tenant or vice versa and the relief asked for in the suit is in the nature of a claim which arises out of the Act or any of its provisions? The answer must be in the affirmative on a reasonable interpretation of

Section 28....."

. It further observed,

".. The provisions of the Act, on the other hand, clearly indicate that all claims or questions arising out of the Act or any of its provisions, even though they may be in the nature of a title to the premises, were to be determined by the Courts specified in Section 28 and no other."

8. In the case of Dattatraya Krishna Jangam vs. Jairam Ganesh Gore **[AIR 1965 Bombay 177]**, a Full Bench of this Court, while dealing with the scope of Section 28 of the Bombay Rent Act to entertain and decide the applications by the Small Causes Court, observed in paras 7 and 8 as under:-

"7. the words used are "relating to recovery of rent or possession" and not "for recovery of rent or possession". The words "relating to" are very wide and would include any suit or proceeding in connection with or

having a direct bearing on the question of possession of the premises. Even if, therefore, the suit is not for possession, if the relief claimed in the suit is in regard to or in respect of recovery of possession, it will come within the ambit or this section. Thus a suit, in which the plaintiff seeks to get rid of an order of his eviction by an injunction restraining the defendant from interfering with his possession, will also be covered by this section.

(8) Section 28 confers jurisdiction upon the special Court not only to decide questions referred to in the section, but also all matters which are incidental or ancillary to the determination of these questions, see Meharsingh Sethi v. Khurshed Nadirshaw Satarwala, 56 Bom. LR 540 and Importers and Manufacturers Ltd. vs. Pheroze F. Taraporewala, 1953 S C R 226: (AIR 1953 SC 73) in which the Supreme Court observed:

". Once there is a suit between

> the landlord and a tenant relating to the recovery of rent or possession of the premises, the Small Causes Court acquires the jurisdiction not only to entertain that suit but also to deal with any claim or question arising out of the Act or any of its provisions which may properly be raised in such a suit."

. It was held in this case that the Court of Small Causes has jurisdiction not only to decide the dispute between the plaintiff landlord and the tenant but also a question raised between the plaintiff and the sub-lessee."

9. Having regards to the difference in the scheme of Section 33(1) of the Rent Act and Section 28(1) of the Bombay Rent Act, as noted hereinabove, the settled legal position on the interpretations of Section 28(1) of the Bombay Rent Act and the fact that in the instant case the suit was filed for seeking possession of the suit premises on the grounds other than the

ground of default in payment of rent or permissible increase, the view taken by both the courts below that the Interim Notice taken out by the defendant for recovery of the society charges was not maintainable, cannot be said to be grossly erroneous or perverse and, therefore, there is no case made out to cause interference in the said concurrent view in this petition under Article 227 of the Constitution.

10. The petition is, therefore, rejected summarily.

(B.H. Marlapalle,J.)